STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Edgefield County

Honorable Diane Schafer Goodstein, Circuit Court Judge

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SC Court of Appeals

THE STATE,

RESPONDENT,

V.

STEVEN LOUIS BARNES,

APPELLANT

APPELLATE CASE NO 2017-002140

INITIAL BRIEF OF APPELLANT

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STATEMENT OF ISSUES ON APPEAL

1. Did the trial judge err in refusing to dismiss the indictment because Appellant was denied his state and federal constitutional right to a speedy trial?

2. Did the trial judge err in failing to dismiss the indictment for the State's failure to comply with the Interstate Agreement on Detainers, finding that the issue had been disposed of and no new action commenced?

STATEMENT OF THE CASE

In August of 2005, the Edgefield County Grand Jury indicted Appellant, Steven Louis Barnes, for murder and kidnapping, indictments #2005-GS-19-273, 457. In December of 2005, Appellant was served with written notice of the State's intention to seek the death penalty. On November 8, 2010, Appellant proceeded to jury trial before the Honorable R. Knox McMahon. Robert J. Harte and David B. Tarr represented Appellant. Donald V. Meyers, Ervin J. Maye and H. Franklin Young, III prosecuted the case. The jury found Appellant guilty of both charges. Following the guilty verdict, a full sentencing hearing was conducted. The jury determined that two aggravating circumstances existed, torture and kidnapping. The jury recommended a sentence of death. Judge McMahon imposed the death sentence. Appellant timely filed and perfected a direct appeal. On January 15, 2014, the South Carolina Supreme Court reversed the convictions and sentences and remanded for a new trial. State v. Barnes, 407 S.C. 27, 753 S.E.2d 545 (2014).

In October of 2017, the Edgefield County Grand Jury re-indicted Appellant for murder, indictment #2017-GS-19-01788. On October 9, 2017, Appellant proceeded to jury trial before the Honorable Diane S. Goodstein. Jeffrey P. Bloom and William S. McGuire represented Appellant at trial. S.R. Hubbard, III, L. Suzanne Mayes, David Shawn Graham and Lucas A. Pencelli prosecuted the case. The jury found Appellant guilty and Judge Goodstein sentenced Appellant to life without the possibility of parole pursuant to S.C. Code §17-25-45. A timely notice of intent to appeal was served on October 16, 2017. This appeal follows.

STANDARD OF REVIEW

The trial court's ruling on a motion for speedy trial is reviewed under an abuse of discretion standard. An abuse of discretion occurs when the court's decision is based on an error of law or upon factual findings that are without evidentiary support. State v. Hunsberger, 418 S.C. 335, 794 S.E.2d 368 (2016).

ARGUMENT

1. The trial judge erred in refusing to dismiss the indictment because Appellant was denied his state and federal constitutional right to a speedy trial.

The jury found Appellant guilty in the fatal shooting of Samuel J. Sturrup in Edgefield County on September 3, 2001. An arrest warrant for murder was issued for Appellant on January 25, 2002. Eight years and ten months later, on November 8, 2010, the case went to trial. Appellant was found guilty and sentenced to death. The conviction and sentence were reversed by the South Carolina Supreme Court on January 15, 2014. State v. Barnes, 407 S.C. 27, 753 S.E.2d 545 (2014).

On October 9, 2017, over fifteen years after the arrest warrant was issued, the case went to trial a second time. Prior to the second trial, on August 14, 2017, Appellant filed a motion to dismiss the indictments based upon the violation of Appellant's speedy trial rights under both the state and federal constitution. (Motion to Dismiss Based Upon the Violation of Appellant's Speedy Trial Rights, R. p. **). The motion was heard at the time of trial on October 9, 2017. (October 9, 2017, Tr. pp. 15-79; 108-116; 160-181). The judge refused to dismiss the indictment and on November 17, 2017, filed a written order denying Appellant's motion to dismiss the indictment based on the speedy trial violation and denying Appellant's motion to dismiss based on a violation of the Interstate Agreement of Detainers Act [IAD]. (Order Denying Defendant's Motions to Dismiss, R. p. **). At the close of the case Appellant renewed the previously made motions. (Tr. p. 661, lines 17-19). The judge declined to change her ruling. The trial judge erred in refusing to dismiss the indictment based on the speedy trial violation.

In State v. Hunsberger, 418 S.C. 335, 342, 794 S.E.2d 368, 371 (2016), the South Carolina Supreme Court wrote, "The Sixth Amendment to the United States Constitution

provides, 'In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial.' U.S. Const. amend. VI. Similarly, the South Carolina Constitution provides that "Any person charged with an offense shall enjoy the right to a speedy and public trial." S.C. Const. art. I, § 14. A speedy trial means a trial without unreasonable and unnecessary delay. State v. Langford, 400 S.C. 421, 441, 735 S.E.2d 471, 482 (2012) (quoting Wheeler v. State, 247 S.C. 393, 400, 147 S.E.2d 627, 630 (1966)). In Smith v. Hooey, 393 U.S. 374, 374–75, 89 S. Ct. 575, 575, 21 L. Ed. 2d 607 (1969), the United States Supreme Court wrote, "In Klopfer v. North Carolina, 386 U.S. 213, 87 S.Ct. 988, 18 L.Ed.2d 1, this Court held that, by virtue of the Fourteenth Amendment, the Sixth Amendment right to a speedy trial[1] is enforceable against the States as 'one of the most basic rights preserved by our Constitution.' Id., at 226, 87 S.Ct. at 995." The remedy for a speedy trial violation is dismissal of the charges. Langford, 400 S.C. at 442, 735 S.E.2d at 482 (internal citation omitted).

In determining whether a defendant has been deprived of the right to a speedy trial, the court must consider four factors: (1) the length of the delay; (2) the reason for the delay; (3) the defendant's assertion of the right; and, (4) prejudice to the defendant. Barker v. Wingo, 407 U.S. 514, 530, 92 S.Ct. 2182, 33 L.Ed 2d 101 (1972). Although there is no fixed time in which a defendant must be tried, the right to a speedy trial may be violated where the delay is arbitrary and unreasonable. State v. Waites, 270 S.C 104, 108, 240 S.E.2d 651, 653 (1978). In a footnote in Doggett v. United States, 505 U.S. 647, 112 S.Ct. 2686, 120 L.Ed.2d 520 (1992), the Court wrote, "Depending on the nature of the charges, the lower courts have generally found post accusation delay 'presumptively prejudicial' at least as it approaches one year." Doggett Fn. 1

In Langford, 400 S.C. 421, 442, 735 S.E.2d 471, 482 (2012) the Court wrote:

> We begin our analysis with the "triggering mechanism" of a speedy trial claim, which is the length of the delay. Barker, 407 U.S. at 530, 92 S.Ct. 2182. We

should not even examine the remaining factors "[u]ntil there is some delay which his presumptively prejudicial." Id. The clock starts running on a defendant's speedy trial right when he is "indicted, arrested, or otherwise officially accused," and therefore we are to include the time between arrest and indictment. United States v. MacDonald, 456 U.S. 1, 6, 102 S.Ct. 1497, 71 L.Ed.2d 696 (1982).

As in Hunsberger, because the timeline is essential to determining that Appellant's speedy trial rights were violated, important dates are outlined below.

- January 25, 2002 – Arrest warrant for murder. (Court's Exhibit #3, p. 1, R. p. *)
- March 7, 2002 – Extradition Order lodged against Appellant as he awaits trial in Georgia. (Court's Exhibit #3, p. 5, R. p. *).
- December 15, 2003 – Conviction in Georgia.
- December 2004-January 2005 – IAD claim filed by Appellant.
- May 18, 2005 – Appellant extradited to South Carolina.
- May 25, 2005 – Hearing before the Honorable William P. Keesley on IAD claim. Appellant was not represented by counsel.
- May 27, 2005 – IAD claim denied and continuance granted. (Court's Exhibit #3, pp. 7-9, R. pp. ***).
- June 6, 2005 – Attorney O. Lee Sturkey appointed to represent Appellant. Sturkey, however, never met with Appellant. (Court's Exhibit #3, p. 10, R. p. *).
- August 10, 2005 – Appellant indicted for murder and kidnapping.
- September 1, 2005 – Attorney Robert Harte appointed to replace Attorney Sturkey. (Court's Exhibit #3, pp. 13-14, R. pp. ***).
- September 8, 2005 – Appellant filed motion to represent himself. (Court's Exhibit #3, pp. 15-17, R. pp. ***).
- September 8, 2005 – Appellant filed a written motion to dismiss pursuant to the violation of the IAD. (Court's Exhibit #3, pp. 18-25, R. pp. ***).
- September 14, 2005 – Appellant filed with the Edgefield County Clerk of Court a letter requesting that the attorney move for a speedy trial and dismissal pursuant to the IAD. Appellant's motion to represent himself not yet heard. (Court's Exhibit #3, pp. 28-30. R. pp. ***).

- October 31, 2005 – The Honorable J. Cordell Maddox vested with exclusive jurisdiction over the case. (Court's Exhibit #3, p. 31, R. p. *).

- November 18, 2005 – Appellant filed with the Edgefield County Clerk of Court a letter requesting that the attorney oppose any continuance motions and specifically referenced undue delay and the IAD. Appellant's motion to represent himself not yet heard. (Court's Exhibit #3, pp. 32-36, R. pp. ***).

- December 13, 2005 – Appellant served with State's notice of intent to seek the death penalty. A letter from the Solicitor to counsel indicated that the case would be called for trial in 2006. (Court's Exhibit #3, pp. 39-40, R. pp. ***).

- February 8, 2006 – Attorney David Tarr is appointed as co-counsel. (Court's Exhibit #3, p. 41, R. p. **).

- May 16, 2006 – Trial date moved to January or February 2007. (Court's Exhibit #3, p. 43, R. p. **).

- April 17, 2008 – Trial date moved to June 2008. (Court's Exhibit #3, p. 44, R. p. **).

- May 13, 2008 – Attorneys for Appellant moved for a continuance and that motion was granted. (Court's Exhibit #3, p. 45, R. p. **).

- January 25, 2010 – The Honorable R. Knox McMahon vested with exclusive jurisdiction over the case, replacing Judge Maddox. (Court's Exhibit #3, p. 48, R. p. **).

- November 8-17, 2010 – First trial.

- January 15, 2014 - South Carolina Supreme Court reversed the convictions and sentences and remanded for a new trial. State v. Barnes, 407 S.C. 27, 753 S.E.2d 545 (2014).

- January 31, 2014 – Remittitur issued.

- April 23, 2014 – Appointment of counsel hearing held.

- June 9, 2014 – The Honorable Diane S. Goodstein vested with exclusive jurisdiction over the case.

- September 11, 2014 – Attorneys Jeffrey P. Bloom and William S. McGuire appointed to represent Appellant. The State objects to the appointment of counsel.

- September 17, 2014 – The State filed an interlocutory appeal in regard to the appointment of counsel.

- July 1, 2015 – The South Carolina Supreme Court affirmed the appointment of counsel. State v. Barnes, 413 S.C. 1. 774 S.E.2d 454 (2015).

- July 14, 2015 – The State filed a petition for rehearing.

- August 6, 2015 – The South Carolina Supreme Court denied the petition for rehearing.

- August 14, 2017 – Appellant filed motions to dismiss for violation of the speedy trial right and violation of the IAD.

- October 9, 2017- Second trial.

In the written motion to dismiss based on the speedy trial violation Appellant argued that the fifteen year delay between January of 2002 when the arrest warrant was issued and October of 2017, the date of the second trial date, triggered the speedy trial analysis. (Motion to Dismiss based on Speedy Trial Violation, p. 5, R. p. **). The trial judge, however, ruled that the timeline for the speedy trial analysis started on January 31, 2014, when the South Carolina Supreme Court issued the remittitur after reversing the first conviction and sentence. (Order Denying Defendant's Motion to Dismiss, p. 8, R. p. **). The judge then found that the three year and seven month delay between the issuance of the remittitur on January 31, 2014, and the October 9, 2017, second trial date triggered the speedy trial analysis. (Order Denying Defendant's Motion to Dismiss, p. 9, R. p. **). Appellant met the initial burden of establishing the threshold time frame triggering the speedy trial analysis under either time frame. In State v. Hunsberger, 418 S.C. 335, 343, 794 S.E.2d 368, 372 (2016), the South Carolina Supreme Court wrote, "Once the accused has met this initial burden, a court must look to four factors, among the totality of the circumstances, to decide whether the defendant's right to a speedy trial has been denied. Barker v. Wingo, 407 U.S. 514,

530–31, 92 S.Ct. 2182, 33 L.Ed.2d 101 (1972); see also Langford, 400 S.C. at 441, 735 S.E.2d at 482."

1. Length of Delay

As to the first Barker factor, length of the delay, based on the totality of the circumstances, this Court should consider the entire over fifteen year delay – the eight year and ten month delay between issuance of the arrest warrant in January of 2002, and Appellant's first trial in November of 2010, the over three year period during the automatic direct appeal process from November 2010, until January of 2014, and the three year and seven month delay between the issuance of the remittitur on January 31, 2014, and the second trial on October 9, 2017. The trial judge erred in refusing to consider the fifteen year time frame. While the entire fifteen year time period cannot be attributed solely to the State, as argued by Appellant in the written motion to suppress based on the speedy trial violation, much of the fifteen year delay is attributed to the State[1]. (Motion to Dismiss for Speedy Trial Violation p . 14, R. p. **). This extraordinary delay weighs heavily against the State. See Hunsberger, 418 S.C. at 346, 794 S.E.2d at 373. (Finding that the eight year delay attributable to the State weighs heavily against the State.).

2. **Reason for Delay**

As to the second factor from Barker, the reason for the delay, "A speedy trial claim must be 'analyzed in terms of the circumstances of each case, balancing the conduct of the prosecution and the defense.' State v. Pittman, 373 S.C. 527, 549, 647 S.E.2d 144, 155 (2008) (citing *Barker*, 407 U.S. at 530, 92 S.Ct. 2182)." Hunsberger, 418 S.C. at 343, 794 S.E.2d at 372. Based on the particular circumstances of the present case and balancing the conduct of the prosecution and the defense, the reasons for the delay weigh heavily against the State.

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[1] In the motion to dismiss Appellant argued that eight years and seven months of the delay were attributable to the State.

The delay between January of 2002, and Appellant's conviction in Georgia in December of 2003, is neutral as Appellant awaited trial in another state. The delay between December 2003, and May of 2008, however, is directly attributable to the State. During this four year and seven month time frame nothing prevented the State from bringing the case to trial. While counsel for Appellant moved for a continuance on May 13, 2008, the case was still not tried until November 2010, two and a half years later. After a reasonable period of time following the continuance, the State had a duty to call the case for trial. At least one year of this delay should be attributed to the State, resulting in a five year and seven month delay attributable to the State.

The delay between November of 2010 and January 2014, is neutral because the case was pending automatic appellate review. The one year and seven month delay between January of 2014, when the remittitur issued and August 6, 2015, when the South Carolina Supreme Court affirmed the trial judge's appointment of counsel and denied the State's petition for rehearing, is directly attributable to the State. The State, rather than proceeding to trial, chose to challenge the appointment of counsel by filing an interlocutory appeal. The State's choice in appealing the judge's appointment of counsel is distinguished from the automatic appellate review following Appellant's first conviction. While the automatic appellate review is neutral, the State's decision to challenge the appointment of counsel, a firmly established fundamental constitutional right[2], is solely attributable to the State. The remaining delay between August 2015, and the second trial date of October 9, 2017 is neutral. The State is responsible for a total seven year and two month delay. This delay is analogous to the eight year extraordinary delay in Hunsberger and weighs heavily against the State.

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[2] See Gideon v. Wainwright, 372 U.S. 335 (1963).

First, the trial judge erred in refusing to consider the delay in calling the case to trial the first time. As discussed above, there was a five year and seven month delay attributable to the State between the issuance of the arrest warrant and the first trial. The trial judge in the present case first found that the prior time frame should not be considered because the speedy trial issue was not raised during the first trial. (Order Denying Motion to Dismiss, p. 8, R. p. **). Appellant asserted the right to a speedy trial at the first trial and that issue will be addressed below. Later in the order, however, the trial judge provided an alternative analysis and timeline which included the time frame between the issuance of the arrest warrant in January of 2002, and the first trial in November 2010. (Order Denying Motion to Dismiss, pp. 14-18, R. pp. **). In the order the trial judge wrote:

> January 25, 2002 through May 13, 2008, a period of 6 years and 4 months is attributable to the Defendant. By requesting a continuance, the Defendant waived his right to dismissal of the charges under a speedy trial claim. The Supreme Court in *Barnes I* ruled that this was the effect on Defendant's IAD claim. Although the two types of speedy trial claims are not analyzed the same, the fact that a continuance was sought necessarily reflects that the defense was not ready for trial. I find that the defense was not ready for trial, but under case law it is clear that when there is a request for continuance that there is a waiver of the dismissal request under speedy trial for the period up to the present or continuously. This doesn't mean that the constitutional right is gone, but that at that time the right to have the charges dismissed is waived. The Defendant's waiver results in a delay attributable to the Defendant and must be weighed against him.

(Order Denying Motion to Dismiss, p. 17, R. p. **).

The trial judge erred. Appellant did not move for a continuance until May 13, 2008. Appellant began seeking relief under the IAD and opposing continuances starting in December 2004/January 2005, when he first filed his IAD claim. As discussed above, the delay between December 2003, and May of 2008, and the delay of at least one year during the two and a half years between the continuance and the first trial are directly attributable to the State.

Second, the trial judge erred in finding that the delay between November 14, 2014, and July 1, 2015, when the State chose to file an interlocutory appeal was neutral. (Order Denying Motion to

Dismiss, pp. 9-10, R. pp. **). As discussed above, the one year and seven month delay between January of 2014, when the remittitur issued and August 6, 2015, when the South Carolina Supreme Court affirmed the trial judge's appointment of counsel and denied the State's petition for rehearing, is directly attributable to the State. The trial judge correctly attributed to the State the one month period from July 1, 20015, to July 27, 2015, when the State sought rehearing.

The judge also erred in attributing the one year and four month time frame from August 10, 2015, to December 16, 2016, to Appellant when Appellant's attorney was under an order of protection during that time frame. As argued above this time frame as well as the time frame from December 16, 2016 to the time of trial on October 9, 2017, which the trial judge attributed to the State, is neutral. This Court should find that the State is responsible for an extraordinary delay of seven years and two months.

In Hunsberger, 418 S.C. at 346, 794 S.E.2d at 374, the South Carolina Supreme Court wrote:

> The State's justifications for delay in trying a defendant are weighted differently: (1) a deliberate attempt to delay trial as a means to hamper the defense weighs heavily against the State; (2) negligence or overcrowded dockets weigh less heavily against the State, but are ultimately its responsibility; (3) a valid reason, such as a missing witness, justifies an appropriate delay; and (4) delays occasioned by the accused weigh against him. Langford, 400 S.C. at 443, 735 S.E.2d at 483 (internal citation omitted). Ultimately, justifying the delay between charge and trial is the responsibility of the State. Langford, 400 S.C. at 443, 735 S.E.2d at 483 (internal citation omitted).

As noted by the trial judge in the order denying the motion to dismiss, "While death penalty cases are inherently complex, the State had already tried this case so the complexity argument is not as strong here, as most, if not all of the witnesses and evidence were known at the time of the remittitur. It is true that a new judge had to be appointed and that defense counsel had to be appointed and given time to prepare for a capital trial. Accordingly, if there is any weight against

the State it would only be weighted slightly for this period of time." (Order Denying Motion to Dismiss, p. 9, R. pp. **). While Appellant's first trial was a capital case, the nature of the capital case does not justify the seven year and two month delay. This factor weighs heavily against the State.

3. **Assertion of the Right**

As to the third factor from Barker, as discussed above, before conducting an alternative analysis, the trial judge first refused to consider the time frame between January 2002, and the first trial in November of 2010, because she found that Appellant failed to assert the speedy trial right during the first trial. (Order Denying Motion to Dismiss, p. 8, R. p. **). The trial judge wrote:

> It is the opinion of this Court that Barnes' IAD claim does not amount to an assertion of a violation of his constitutional rights to a speedy trial. Any other attempts to raise the constitutional speedy trial rights would have been raised by letters written by the Defendant when he was represented by counsel and this court does not recognize hybrid representation. Barnes' letter of September 2005 would have been written just after counsel was appointed. It is unclear to this Court whether Barnes was aware that he had counsel at that time. The letter appears to be a request under the IAD. In the event it could be considered a constitutional speedy trial request, it was never heard or ruled upon as a constitutional speedy trial request prior to trial. Additionally, it was never raised at the original trial or subsequently for the court to rule upon. Accordingly, I find the Defendant did not properly assert his right and that the issue was not preserved for appeal.

(Order Denying Motion to Dismiss, p. 8, R. p. **). The trial judge erred. First, it is undisputed that Appellant asserted his rights pursuant to the IAD. While the IAD is a statutory right, the IAD should also be considered an assertion of the constitutional right to a speedy trial. Second, apart from the assertion of the right to a speedy trial pursuant to the IAD, Appellant specifically attempted to assert his constitutional speedy trial right. On September 14, 2005, Appellant filed with the Edgefield County Clerk of Court a letter requesting that the attorney move for a speedy trial and dismissal pursuant to the IAD. (Court's Exhibit #3, pp. 28-30. R. pp. ***). The trial judge refused to consider this *pro se* assertion because Appellant was represented by counsel. Prior to

filing of the *pro se* assertion of his speedy trial right, however, Appellant filed a motion to represent himself. (Court's Exhibit #3, pp. 15-17, R. pp. ***). Counsel was appointed on September 1, 2005. In a *pro se* motion dated September 5, 2005, Appellant moved to represent himself pursuant to Faretta v. California, 422 U.S. 806 (1975). (Court's Exhibit #3, pp. 15-17, R. pp. ***).

Appellant's *pro se* motion for a speedy trial and all of his *pro se* motions pursuant to the IAD should be considered assertions of the constitutional speedy trial right because Appellant tried to relieve counsel prior to making the *pro se* motions. On September 8, 2005, Appellant filed a *pro se* written motion to dismiss pursuant to the violation of the IAD. (Court's Exhibit #3, pp. 18-25, R. pp. ***). On November 18, 2005, Appellant filed with the Edgefield County Clerk of Court a letter requesting that the attorney oppose any continuance motions and specifically referenced undue delay and the IAD. (Court's Exhibit #3, pp. 32-36, R. pp. ***). The notice of intent to seek the death penalty indicated that the case would be called to trial in 2006. (Court's Exhibit #3, pp. 39-40, R. pp. ***). Then, despite Appellant's expressed request for a speedy trial, addressed in letters to the attorneys because the trial court had still not heard Appellant's motion to represent himself, the case was continued several times and not called to trial until November of 2010.

When the case was finally called to trial, Appellant moved to waive counsel and represent himself. The motion was denied. The South Carolina Supreme Court later reversed the sentence and conviction based on the trial judge's failure to allow Appellant to waive counsel and proceed *pro se*. State v. Barnes, 407 S.C. 27, 753 S.E.2d 545 (2014). Appellant asserted his speedy trial rights through *pro se* filings while Appellant was represented by counsel. Appellant, however, had moved to relieve counsel. The Court found Appellant had a right to relieve counsel and proceed *pro se*. As a result, his *pro se* filings for a speedy trial and under the IAD constitute an assertion of the constitutional right to a speedy trial. On August 14, 2017, Appellant again asserted his right to a

speedy trial by filing separate written motions to dismiss, one addressing the constitutional speedy trial right and the other addressing the right to a speedy trial pursuant to the IAD. (Motions to Dismiss Based on violation of speedy trial and IAD, R. pp. **). The assertion factors weigh against the State.

4. Prejudice

As to the fourth factor from Barker, prejudice, the Court in Barker wrote:

> Prejudice, of course, should be assessed in the light of the interests of defendants which the speedy trial right was designed to protect. This Court has identified three such interests: (i) to prevent oppressive pretrial incarceration; (ii) to minimize anxiety and concern of the accused; and (iii) to limit the possibility that the defense will be impaired. Of these, the most serious is the last, because the inability of a defendant adequately to prepare his case skews the fairness of the entire system. If witnesses die or disappear during a delay, the prejudice is obvious. There is also prejudice if defense witnesses are unable to recall accurately events of the distant past. Loss of memory, however, is not always reflected in the record because what has been forgotten can rarely be shown.

Barker v. Wingo, 407 U.S. 514, 532, 92 S. Ct. 2182, 2193, 33 L. Ed. 2d 101 (1972).

The lack of a showing prejudice, however, does not preclude finding a violation of the speedy trial right. In Doggett v. United States, 505 U.S. 647, 112 S.Ct. 2686, 120 L.Ed.2d 520 (1992), the Court granted relief while noting that Doggett "did indeed come up short" in making "any affirmative showing that the delay weakened his ability to raise specific defenses, elicit specific testimony, or produce specific items of evidence." As a result, the Court explained "we generally have to recognize that excessive delay presumptively compromises the reliability of a trial in ways that neither party can prove, or for that matter, identify." In light of the difficult nature of proving prejudice, the Court held that the importance of presumptive prejudice increases with the length of delay. Doggett, 505 U.S. at 655-656. In the absence of proof of particularized prejudice, the state's negligence and a substantial delay will compel relief unless the presumption of prejudice is either "extenuated, as by the defendant's acquiescence, or persuasively rebutted" by the

prosecution. Id. at 658. The presumption of prejudice in the present case was neither extenuated by Appellant's acquiescence, nor persuasively rebutted by the prosecution. Prejudice should be presumed because of the extraordinary delay of seven years and two months.

In Moore v. Arizona, 414 U.S. 25, 26, 94 S. Ct. 188, 189-90, 38 L. Ed. 2d 183 (1973) the United States Supreme Court wrote:

> A defendant is not required to show prejudice affirmatively to win a speedy trial claim. The state court was in fundamental error in its reading of Barker v. Wingo and in the standard applied in judging petitioner's speedy trial claim. Barker v. Wingo expressly rejected the notion that an affirmative demonstration of prejudice was necessary to prove a denial of the constitutional right to a speedy trial:
>
> 'We regard none of the four factors identified above (length of delay, reason for delay, defendant's assertion of his right, and prejudice to the defendant) as either a necessary or sufficient condition to the finding of a deprivation of the right of speedy trial. Rather, they are related factors and must be considered together with such other circumstances as may be relevant. In sum, these factors have no talismanic qualities; courts must still engage in a difficult and sensitive balancing process. But, because we are dealing with a fundamental right of the accused, this process must be carried out with full recognition that the accused's interest in a speedy trial is specifically affirmed in the Constitution.' 407 U.S., at 533, 92 S.Ct., at 2193 (footnote omitted).
>
> In addition to possible prejudice, any court must thus carefully weigh the reasons for the delay in bringing an incarcerated defendant to trial. In the face of petitioner's repeated demands, did the State discharge its 'constitutional duty to make a diligent, good-faith effort to bring him (to trial)'? Smith v. Hooey, 393 U.S. 374, 383, 89 S.Ct. 575, 21 L.Ed.2d 607 (1969).

In Hunsberger the South Carolina Supreme Court wrote:

> First, we note that the trial court's ruling was influenced by an error of law in so much as it rested on a belief that actual prejudice—to the exclusion of presumptive prejudice—was the only type of prejudice that would support a speedy trial claim. In fact, an accused can assert actual prejudice or presumptive prejudice as the result of the State's violation of his right to a speedy trial. Actual prejudice occurs when the trial delay has weakened the accused's ability to raise specific defenses, elicit specific testimony, or produce specific items of evidence. See Doggett, 505 U.S. at 655, 112 S.Ct. 2686 (accepting the State's definition of actual prejudice). The United States Supreme Court also recognized that excessive delay presumptively compromises the reliability of a trial in ways

> that neither party can prove or even identify. Id. (internal citation omitted). This is so because "time's erosion of exculpatory evidence and testimony 'can rarely be shown.'" Doggett, 505 U.S. at 655, 112 S.Ct. 2686 (citing Barker, 407 U.S. at 532, 92 S.Ct. 2182). When the government persistently fails to try an accused and the delay is excessive, the accused need not show actual prejudice in order to prevail in his speedy trial claim. Doggett, 505 U.S. at 657–58, 112 S.Ct. 2686. While presumptive prejudice cannot alone support a speedy trial claim, it is part of the mix of relevant facts, and its importance increases with the length of time. Doggett, 505 U.S. at 656, 112 S.Ct. 2686 (internal citation omitted).

418 S.C. at 351, 794 S.E.2d at 376. Prejudice should be presumed in the present case.

In Langford, 400 S.C. 421, 441-442, 735 S.E.2d 471, 482 (2012) the Court wrote:

> The Supreme Court has counseled further that none of these factors is "either a necessary or sufficient condition to the finding of a deprivation of the right of speedy trial." Barker, 407 U.S. at 533, 92 S.Ct. 2182. Instead, they are all related and must be considered along "with such other circumstances as may be relevant." Id. Thus, the Supreme Court created a balancing test which is a rejection of "inflexible approaches" and weighs "the conduct of both the prosecution and the defense." Id. at 529–30, 92 S.Ct. 2182.

Based on all of the factors discussed above, the seven year and two month delay caused by the State, the continued assertions by Appellant of his right to a speedy trial in the first and second trial and the presumed prejudice, Appellant's constitutional rights under both the state and federal constitutions were violated. The trial judge abused her discretion in refusing to dismiss the indictment. This Court must dismiss the indictment.

2. **The trial judge erred in failing to dismiss the indictment for the State's failure to comply with the Interstate Agreement on Detainers, finding that the issue had been disposed of and no new action commenced.**

On August 14, 2017, at the same time Appellant filed a motion to dismiss the indictment based upon violation of the defendant's speedy trial rights, Appellant also filed a motion to object and preserve defendant's objection under the IAD. (Motion to Object and Preserve Defendant's Objection Under the Interstate Agreement on Detainers Act, R. p. **). In the order denying the motions to dismiss the trial judge wrote, "The Supreme Court decision in Barnes's initial trial reversing the Defendant's conviction and sentence of death (hereafter called *Barnes I*) fully disposed of the IAD claim. Barnes has failed to present any new evidence to justify questioning that decision. Additionally, there has been no new IAD action commenced subsequent to that decision. Accordingly, Barnes' motion to dismiss for violation of the IAD is hereby denied." (Order Denying Motions to Dismiss, p. 6, R. p. **). The trial judge erred.

In December 2004 – January 2005, Appellant, incarcerated in Georgia, filed an IAD claim. On May 18, 2005, Appellant was extradited to South Carolina. On May 25, 2005, a hearing was held before the Honorable William P. Keesley on the IAD claim. Appellant was not represented by counsel. On May 27, 2005, in a written order, Judge Keesley denied the IAD claim and continued the case. (Court's Exhibit #3, pp. 7-9, R. p. **). On September 8, 2005, Appellant filed a motion to represent himself. (Court Exhibit #3, pp. 15-17, R. pp. **). On that same date Appellant filed a *pro se* motion to dismiss pursuant to the violation of the IAD. (Court's Exhibit #3, pp. 18-25, R. pp. **). On September 14, 2005, and November 18, 2005, Appellant filed letters with the Edgefield County Clerk of Court requesting that the attorney move for dismissal based on the IAD violation. (Court's Exhibit #3, pp. 28-30, pp. 32-36, R. pp. **, pp. **).

In State v. Barnes, 407 S.C. 27, 37, 753 S.E.2d 545, 550–51 (2014), the South Carolina Supreme Court wrote:

> Since the Faretta error mandates reversal, we need not reach any of appellant's other issues save that alleging he was entitled to dismissal of all charges under the IAD Act. On the face of this record, it appears appellant waived his speedy trial rights under this Act, and we therefore decline to reverse on this ground. See New York v. Hill, 528 U.S. 110, 120 S.Ct. 659, 145 L.Ed.2d 560 (2000).

In the motion to dismiss based on the IAD violation, Appellant argued, "The defendant acknowledges that the S. C. Supreme Court denied this claim in the original direct appeal in *Barnes I.* However, it appears the record-on-appeal did not include all of the relevant documents and dates as set forth above and herein, such that the Court in *Barnes I* summarily dismissed this claim without apparently reviewing the underlying merits." (Motion to Object and Preserve Defendant's Objection Under the Interstate Agreement on Detainers Act, p. 5, R. p. **). The trial judge abused her discretion in refusing to reconsider the claim based on the information presented.

In State v. Hill, 409 S.C. 50, 58, 760 S.E.2d 802, 806–07 (2014), the South Carolina Supreme Court wrote:

> The IAD is a compact enabling participating states to obtain custody of prisoners incarcerated in other participating jurisdictions and bring those prisoners to trial. Reed v. Farley, 512 U.S. 339, 340, 114 S.Ct. 2291, 129 L.Ed.2d 277 (1994). The central purpose of the IAD is to allow participating states to uniformly and expeditiously dispose of charges pending against prisoners held out of state. S.C.Code Ann. § 17–11–10 (2003); State v. Adams, 354 S.C. 361, 370, 580 S.E.2d 785, 790 (Ct.App.2003).
>
> S.C.Code Ann. § 17–11–10 (2003) provides, in relevant part:
>
> Whenever a person has entered upon a term of imprisonment in a penal or correctional institution of a party state, and whenever during the continuance of the term of imprisonment there is pending in any other party state any untried indictment, information or complaint on the basis of which a detainer has been lodged against the prisoner, he shall be brought to trial within one hundred eighty

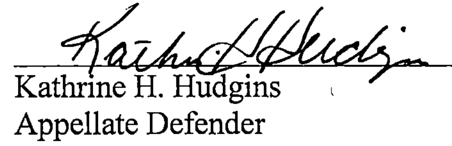
> days after he shall have caused to be delivered to the prosecuting officer and the appropriate court of the prosecuting officer's jurisdiction written notice of the place of his imprisonment and his request for a final disposition to be made of the indictment, information or complaint; provided, that for good cause shown in open court, the prisoner or his counsel being present, the court having jurisdiction of the matter may grant any necessary or reasonable continuance ...

While continuances are permitted under the IAD, such must be based on "good cause shown in open court, the prisoner or his counsel being present." Judge Keeseley granted the first continuance, after a hearing, on May 27, 2005. (Court's Exhibit #3. Pp. 7-9, R. pp. **). On May 16, 2006, Judge Maddox granted a second continuance, after a hearing, and set a trial date for January or February 2007. (Court's Exhibit #3. p. 43, R. pp. **). On April 17, 2008, Judge Maddox set a trial date of June 2008. (Court's Exhibit #3. p. 44, R. pp. **). There is nothing in this order to explain why the case was not called for trial in January or February of 2007, as previously ordered, no indication a hearing was held or good cause shown. On May 13, 2008, counsel for Appellant moved for a continuance and the motion was granted. (Court's Exhibit #3. P. 45, R. pp. **). During the three year time period between May 2005, and May 2008, Appellant did not waive his rights pursuant to the IAD. The 180 day time limit under the IAD was clearly exceeded.

In <u>State v. Holbrook</u>, 274 S.C. 4, 6, 260 S.E.2d 181, 182 (1979), the South Carolina Supreme Court wrote, "We have previously considered, in <u>State v. Patterson</u> et al., S.C., 256 S.E.2d 417 <u>and State v. Allen</u>, 269 S.C. 233, 237 S.E.2d 64, the nature of the time constraints imposed by the Act. In accord with these prior decisions, the 120 day time limitation imposed under Article IV(c) is mandatory and required dismissal of the charges against appellants with prejudice." The trial judge erred in refusing to reconsider the issue and in refusing to dismiss the indictment based on the violation of the IAD.

CONCLUSION

Based on the arguments presented in both issue one and issue two, this Court should reverse the conviction.



Kathrine H. Hudgins
Appellate Defender

ATTORNEY FOR APPELLANT

This 22nd day of August, 2018.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Edgefield County

Honorable Diane Schafer Goodstein, Circuit Court Judge

RECEIVED
AUG 22 2018
SC Court of Appeals

THE STATE,

RESPONDENT,

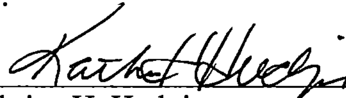
V.

STEVEN LOUIS BARNÉS,

APPELLANT

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the Initial Brief of Appellant and Designation of Matter in the above referenced case has been served upon Melody J. Brown, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and a copy of the Initial Brief of Appellant and Designation of Matter have been served on Steven Louis Barnes, #327117, at McCormick Correctional Institution, 386 Redemption Way, McCormick, SC 29899, this 22nd day of August, 2018.



Kathrine H. Hudgins
Appellate Defender
ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 22nd day of August, 2018.

(L.S)

Notary Public for South Carolina
My Commission Expires: July 5, 2027.